

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BYRON LEE CLARK,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration,

Defendant.

NO: 1:14-CV-0016-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 15, 19. Plaintiff is represented by Dana C. Madsen. Defendant is represented by Erin F. Highland. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

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1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g),
3 1383(c)(3).

4 STANDARD OF REVIEW

5 A district court's review of a final decision of the Commissioner of Social
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is
7 limited: the Commissioner's decision will be disturbed "only if it is not supported
8 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
9 1158 (9th Cir. 2012). "Substantial evidence" means relevant evidence that "a
10 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
11 (quotation and citation omitted). Stated differently, substantial evidence equates to
12 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
13 citation omitted). In determining whether this standard has been satisfied, a
14 reviewing court must consider the entire record as a whole rather than searching
15 for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its
17 judgment for that of the Commissioner. If the evidence in the record "is
18 susceptible to more than one rational interpretation, [the court] must uphold the
19 ALJ's findings if they are supported by inferences reasonably drawn from the
20 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
4 The party appealing the ALJ’s decision generally bears the burden of establishing
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
13 impairment must be “of such severity that he is not only unable to do his previous
14 work[,] but cannot, considering his age, education, and work experience, engage in
15 any other kind of substantial gainful work which exists in the national economy.”
16 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
19 §§ 404.1520(a)(4)(i)–(v), 416.920(a)(4)(i)–(v). At step one, the Commissioner
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R.
3 §§ 404.1520(b), 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
7 claimant suffers from “any impairment or combination of impairments which
8 significantly limits [his or her] physical or mental ability to do basic work
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to
13 several impairments recognized by the Commissioner to be so severe as to
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R.
15 §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe as or more
16 severe than one of the enumerated impairments, the Commissioner must find the
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations, 20 C.F.R.
3 §§ 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of
4 the analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv),
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
9 Commissioner must find that the claimant is not disabled. 20 C.F.R.
10 §§ 404.1520(f), 416.920(f). If the claimant is incapable of performing such work,
11 the analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's
13 RFC, the claimant is capable of performing other work in the national economy.
14 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
15 the Commissioner must also consider vocational factors such as the claimant's age,
16 education and work experience. *Id.* If the claimant is capable of adjusting to other
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
18 §§ 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to
19 other work, the analysis concludes with a finding that the claimant is disabled and
20 is therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Lockwood v. Comm’r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If
3 the analysis proceeds to step five, the burden shifts to the Commissioner to
4 establish that (1) the claimant is capable of performing other work; and (2) such
5 work “exists in significant numbers in the national economy.” 20 C.F.R.
6 §§ 404.1560(c), 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir.
7 2012).

8 ALJ FINDINGS

9 Plaintiff filed applications for disability benefits and supplemental security
10 income on May 31, 2011. Tr. 156–62, 163–70. Plaintiff’s claims were denied
11 initially and on reconsideration. Tr. 106–09, 110–13, 119–20, 121–23. Plaintiff
12 requested a hearing before an ALJ, which was held on September 12, 2012. Tr.
13 24–61. The ALJ rendered a decision denying Plaintiff supplemental security
14 income on October 9, 2012. Tr. 11–23.

15 At step one, the ALJ found that Plaintiff had not engaged in substantial
16 gainful activity since October 10, 2008, the alleged onset date. Tr. 13. At step
17 two, the ALJ found that Plaintiff had the following severe impairments: diabetes
18 mellitus; mild osteoarthritis of the right shoulder; mild osteoarthritis of the right
19 knee; history of heavy alcohol use; degenerative disc disease of the lumbar spine
20 without clinical findings; and morbid obesity. *Id.* At step three, the ALJ found

1 that Plaintiff did not have an impairment or combination of impairments that met
2 or medically equaled a listed impairment. Tr. 17.

3 The ALJ then concluded that Plaintiff had the RFC to
4 perform the full range of medium work as defined in 20 CFR
5 404.1567(c) and 416.967(c). Further, the claimant is capable of work
6 that involves lifting no more than 20 pounds overhead; occasional
7 overhead reaching with the right upper extremity; occasional
balancing, stooping, kneeling, crouching, crawling, and climbing; no
climbing of ladders, ropes or scaffolds; and avoidance of concentrated
exposure to hazards.

8 Tr. 18. The ALJ found, at step four, that Plaintiff was unable to perform any past
9 relevant work. Tr. 22. At step five, the ALJ found that, considering Plaintiff's
10 age, education, work experience, and RFC, there exist significant numbers of jobs
11 in the national economy that Plaintiff could perform in representative occupations
12 such as kitchen helper, dining room attendant, and store laborer. Tr. 22–23. On
13 that basis, the ALJ concluded that Plaintiff was not disabled as defined in the
14 Social Security Act. Tr. 23.

15 The Appeals Council denied Plaintiff's request for review on November 20,
16 2013, making the ALJ's decision the Commissioner's final decision for purposes
17 of judicial review. Tr. 1–5; 20 C.F.R. §§ 404.981, 416.1484, 422.210.

18 ISSUES

19 Plaintiff raises three issues for review. First, Plaintiff contends the ALJ
20 erred at step two by failing to conclude he had severe psychological impairments.

1 ECF No. 15 at 8. Second, Plaintiff contends the ALJ erred by failing to properly
2 consider or reject two medical opinions. *Id.* at 9. Third, Plaintiff contends the ALJ
3 erred in determining Plaintiff's residual functional capacity by making erroneous
4 credibility findings. *Id.* at 10–12.

5 DISCUSSION

6 A. Mental Impairment Analysis

7 Plaintiff contends the ALJ erred in failing to find Plaintiff's psychological
8 impairments were not severe. ECF No. 15 at 8. Plaintiff reasons further that if
9 Drs. Arnold and Chandler's opinions were credited, he would be found disabled.
10 *Id.* at 9–10. Not until his reply brief does Plaintiff put flesh to this argument,
11 contending that “there is more than a minimal limitation in [Plaintiff's] ability to
12 do work activities.” ECF No. 20 at 2.

13 In determining, at step two, the severity of mental functional limitations, an
14 ALJ must consider the claimants: (1) daily activities; (2) social functioning; (3)
15 concentration, persistence, or pace; and (4) episodes of decompensation. 20 C.F.R.
16 § 404, subpt. P, app. 1, 12.00(C); SSR 96-8p, 1996 WL 374184 (July 2, 1996)
17 (“Paragraph C” limitations “are used to rate the severity of mental impairment(s) at
18 steps 2 and 3 of the sequential evaluation process.”). If the ALJ concludes that the
19 limitation is “mild” or “none” in the first three functional areas and “none” in the
20 fourth area, a finding that the impairment is not severe is appropriate, “unless the

1 evidence otherwise indicates that there is more than a minimal limitation in [the
2 claimant's] ability to do basic work activities." 20 C.F.R. § 416.920a(d)(1); *see*
3 *also Fisher v. Astrue*, 788 F.Supp.2d 1219, 1229–30 (E.D. Wash. 2011).

4 In evaluating daily activities for mental impairments, the ALJ must "assess
5 the quality of these activities by their independence, appropriateness, effectiveness,
6 and sustainability." 20 C.F.R. § 404, subpt. P, app. 1, 12.00(C)(1). Here, the ALJ
7 concluded that Plaintiff only had a mild limitation in activities of daily living based
8 upon the facts that he "has no problems with personal hygiene. He is able to
9 handle his finances. He cooks, does household chores, drives, goes grocery
10 shopping, watches T.V., and goes fishing." Tr. 16.

11 In evaluating the social functioning of a claimant, an ALJ evaluates a
12 claimant's "capacity to interact independently, appropriately, effectively, and on a
13 sustained basis with other individuals." 20 C.F.R. § 404, subpt. P, app. 1,
14 12.00(C)(2). The ALJ concluded that Plaintiff was mildly limited based upon the
15 facts that "[h]e regularly socializes with his friends and girlfriend. He sees his
16 children twice a week and talks to his daughter on the phone daily. He lives with
17 his parents and sees his sisters once a week." Tr. 16, 258.

18 Finally, in evaluating a claimant's concentration, persistence, or pace, an
19 ALJ must evaluate the claimant's "ability to sustain focused attention and
20 concentration sufficiently long to permit the timely and appropriate completion of

1 tasks commonly found in work settings.” 20 C.F.R. § 404, subpt. P, app. 1,
2 12.00(C)(3). The ALJ concluded Plaintiff had no limitation in this capacity, citing
3 the memory and concentration tests administered by Dr. Chandler. Tr. 17, 257.
4 The ALJ also noted that Dr. Chandler observed that Plaintiff “was not taking any
5 medication for anxiety and had never received counseling. He reported he
6 previously took medication for anxiety and that while taking the medication he did
7 not have these episodes.” Tr. 14.

8 Thus, the record contains substantial evidence to support the ALJ’s
9 determination at step two that Plaintiff did not suffer from a severe mental
10 impairment.

11 B. Medical Opinions

12 Plaintiff contends the ALJ erred in rejecting or discounting the opinions of
13 John Arnold, Ph.D., and Samantha Chandler, Psy.D. ECF No. 15 at 9. Defendant
14 contends these opinions were properly evaluated and rejected by the ALJ. ECF
15 No. 19 at 10–14.

16 A treating physician’s opinions are entitled to substantial weight in social
17 security proceedings. *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
18 (9th Cir.2009). If a treating or examining physician’s opinion is uncontradicted, an
19 ALJ may reject it only by offering “clear and convincing reasons that are supported
20 by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.

1 2005). If a treating or examining doctor’s opinion is contradicted by another
2 doctor’s opinion, an ALJ may only reject it by providing specific and legitimate
3 reasons that are supported by substantial evidence.” *Id.* (citing *Lester v. Chater*, 81
4 F.3d 821, 830-31 (9th Cir. 1995)). However, the ALJ need not accept a
5 physician’s opinion that is “brief, conclusory and inadequately supported by
6 clinical findings.” *Bray*, 554 F.3d at 1228 (quotation and citation omitted). An
7 ALJ may also reject a treating physician’s opinion which is “based to a large extent
8 on a claimant’s self-reports that have been properly discounted as incredible.”
9 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (internal and quotation
10 and citation omitted).

11 The ALJ gave some weight, but not significant weight, to the opinion of Dr.
12 Chandler. Tr. 15–16. The ALJ reasoned that, while Dr. Chandler had an
13 opportunity to personally examine Plaintiff, her anxiety diagnosis was based upon
14 Plaintiff’s self-reporting and not on objective clinical findings. *Id.* The ALJ
15 assigned this aspect of Dr. Chandler’s opinion little weight because it failed to
16 indicate the degree of limitation that claimant would have in interacting with
17 others. Dr. Chandler opined that her evaluation that Plaintiff could “adapt and
18 function appropriately within a work setting and sustain concentration and
19 attention over the course of a traditional 8-hour/5-day workweek, [though] his
20

1 ability to maintain consistent, appropriate interactive behaviors may be affected by
2 symptoms of his anxiety.” Tr. 259.

3 As defined in the regulations, “[a]n impairment or combination of
4 impairments is not severe if it does not significantly limit [the claimant's] physical
5 or mental ability to do basic work activities.” 20 C.F.R. § 416.921(a). “Basic
6 work activities” include, *inter alia*, “[r]esponding appropriately to supervision,
7 coworkers and usual work situations.” 20 C.F.R. § 416.921(b). “[A]n impairment
8 is found not severe . . . when medical evidence establishes only a slight
9 abnormality or a combination of slight abnormalities which would have no more
10 than a minimal effect on an individual’s ability to work.” *Yuckert v. Bowen*, 841
11 F.2d 303, 306 (9th Cir. 1988) (quoting SSR 85-28, 1985 WL 56856 (Jan. 1, 1985)).

12 Dr. Chandler’s opinion does not address whether Plaintiff’s anxiety would
13 significantly limit his mental abilities to do basic work. In fact, Dr. Chandler’s
14 opinion suggests that Plaintiff can accomplish basic work activities over a
15 traditional work day/week though with the possibility that he may have some
16 problems with his interactions with others. Dr. Chandler offered no opinion of the
17 likelihood of the potential problems, nor that the potential problems would
18 significantly limit Plaintiff’s abilities. As such, Dr. Chandler’s opinion did not
19 establish that Plaintiff suffered from a disability as defined by the Act, and the ALJ
20 did not err in rejecting Dr. Chandler’s opinion.

1 The ALJ also gave little weight to the opinion of Dr. Arnold. Tr. 16. The
2 ALJ concluded that the opinion was not reliable because the opinion was given
3 without providing the actual results and test scores from the evaluations performed.
4 *Id.* Plaintiff contends this was in error because it is “unclear how the conveyance
5 of the testing results in summary as opposed to raw scores renders the testing non-
6 objective.” ECF No. 15 at 9. What is significant about Dr. Arnold’s synopsis is
7 that he mentions that “deviations in test taking attitude (validity issues) appeared
8 primarily on the PAI profile, and to a lesser extent on the MMPI-2RF.” Tr. 275.
9 However, Dr. Arnold then attempts to explain away these deviations in Plaintiff’s
10 “defense.” *Id.* By failing to provide the actual results indicating over-reporting,
11 Dr. Arnold’s opinion explaining away the deviations is unsupported by clinical
12 findings. The ALJ may properly reject this opinion as it is “brief, conclusory and
13 inadequately supported by clinical findings.” *Bray*, 554 F.3d at 1228.

14 Further, as the ALJ concluded, even if Dr. Arnold’s opinion is accepted, it
15 can only establish that Plaintiff suffered from severe impairments from August 17,
16 2012, the date of the evaluation, and a mere two weeks before Plaintiff’s
17 administrative hearing. Tr. 16. To demonstrate he is disabled, Plaintiff must show
18 a “determinable physical or mental impairment . . . which has lasted or can be
19 expected to last for a continuous period of not less than 12 months” 42
20 U.S.C. § 423(d)(1)(A). Dr. Arnold made no findings and offered no opinion

1 regarding whether Plaintiff's depression had lasted for a year or was expected to
2 last a year. As such, the ALJ did not err in concluding the report would not
3 support Plaintiff's claimed disability. The ALJ did not err in rejecting the opinions
4 of Dr. Chandler and Dr. Arnold.

5 C. Plaintiff's Credibility

6 Plaintiff contends that the ALJ erred by rejecting Plaintiff's subjective
7 complaints about the severity of symptoms caused by his impairments. ECF No.
8 15 at 10. Plaintiff argues that "the ALJ failed to provide specific findings with
9 clear and convincing reasons for discrediting [Plaintiff's] testimony." *Id.*

10 Defendant contends the ALJ provided legally sufficient reasons to reject Plaintiff's
11 testimony based upon Plaintiff's medical record, daily activities, and work history.
12 ECF No. 19 at 15–20.

13 In social security proceedings, a claimant must prove the existence of a
14 physical or mental impairment with "medical evidence consisting of signs,
15 symptoms, and laboratory findings." 20 C.F.R. §§ 416.908, 416.927. A claimant's
16 statements about his or her symptoms alone will not suffice. 20 C.F.R. §§
17 416.908, 416.927. Once an impairment has been proven to exist, an ALJ "may not
18 reject a claimant's subjective complaints based solely on a lack of objective
19 medical evidence to fully corroborate the alleged severity of pain." *Bunnell v.*
20 *Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). As long as the impairment

1 “could reasonably be expected to produce [the] symptoms,” the claimant may offer
2 a subjective evaluation as to the severity of the impairment. *Id.* This rule
3 recognizes that the severity of a claimant’s symptoms “cannot be objectively
4 verified or measured.” *Id.* at 347 (quotation and citation omitted).

5 However, an ALJ may conclude that the claimant’s subjective assessment is
6 unreliable, so long as the ALJ makes “a credibility determination with findings
7 sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not
8 arbitrarily discredit claimant's testimony.” *Thomas v. Barnhart*, 278 F.3d 947, 958
9 (9th Cir. 2002); *see also Bunnell*, 947 F.2d at 345 (“[A]lthough an adjudicator may
10 find the claimant's allegations of severity to be not credible, the adjudicator must
11 specifically make findings which support this conclusion.”). In making such a
12 determination, the ALJ may consider, *inter alia*: (1) the claimant’s reputation for
13 truthfulness; (2) inconsistencies in the claimant’s testimony or between her
14 testimony and her conduct; (3) the claimant’s daily living activities; (4) the
15 claimant’s work record; and (5) testimony from physicians or third parties
16 concerning the nature, severity, and effect of the claimant’s condition. *Thomas*,
17 278 F.3d at 958. If there is no evidence of malingering, the ALJ’s reasons for
18 discrediting the claimant's testimony must be “specific, clear and convincing.”
19 *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th Cir. 2012) (quotation and citation
20 omitted). The ALJ “must specifically identify the testimony she or he finds not to

1 be credible and must explain what evidence undermines the testimony.” *Holohan*
2 *v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001).

3 Here, the ALJ found that Plaintiff’s medically determinable impairments
4 could reasonably be expected to cause Plaintiff’s alleged symptoms. Tr. 19.
5 However, the ALJ did not credit Plaintiff’s testimony about the severity of his
6 symptoms and their impact on his functional capacity.

7 The ALJ found that Plaintiff’s allegations of disabling symptoms were not
8 consistent with the medical evidence. Tr. 19. The ALJ examined Plaintiff’s
9 physical evaluations in July 2008, January 2010, March 2011, and July 2011,
10 including x-ray and MRI results. Tr. 19–20. These examinations indicated that
11 Plaintiff suffered from mild to moderate degenerative impairments to his back,
12 knees, and shoulders, though his reflexes, gait, and range of motion remained
13 within normal limits. Tr. 19–20, 241, 260–61, 263–65, 267–68. Plaintiff also did
14 not exhibit any pain or tenderness in a number of objective tests administered in
15 July 2011. Tr. 264. None of the medical evaluations in the record indicate that
16 Plaintiff exhibited severe pain or physical restrictions from his impairments.
17 “While subjective pain testimony cannot be rejected on the sole ground that it is
18 not fully corroborated by objective medical evidence, the medical evidence is still
19 a relevant factor in determining the severity of the claimant’s pain and its disabling
20 effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ did

1 not err by basing her credibility determination, upon the objective medical
2 evidence which did not corroborate the debilitating pain Plaintiff subjectively
3 claimed.

4 The ALJ then found Plaintiff's statements about the extent of his limitations
5 were inconsistent with evidence of his daily activities. Tr. 21. Specifically, the
6 ALJ noted that Plaintiff self-reported in a June 2011 psychological evaluation that
7 he "cooks, does household chores, drives, goes grocery shopping, watches T.V.,
8 and goes fishing." Tr. 21, 258. The ALJ provided no more explanation why
9 Plaintiff's daily activities were inconsistent with his alleged symptoms.

10 There are two grounds for using daily activities to form the basis for an
11 adverse credibility determination. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.
12 2007). First, the daily activities may just contradict claimant's other testimony. *Id.*;
13 *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) ("whether the claimant
14 engages in daily activities inconsistent with the alleged symptoms") (citation
15 omitted). Second, daily activities may be grounds for an adverse credibility finding
16 if a claimant is able to spend a substantial part of his day engaged in pursuits
17 involving the performance of physical functions that are transferable to a work
18 setting. *Orn*, 495 F.3d at 639. Here, the ALJ merely cited Plaintiff's activities of
19 daily living, as also supporting an adverse credibility finding.

1 Finally, the ALJ relied upon the fact that Plaintiff's last job ended because
2 he was laid off, not because of his alleged symptoms. Plaintiff was laid off in
3 October 2008. Tr. 256. Plaintiff had been injured on the job on July 1, 2008,
4 when a piece of metal fell on his back. Tr. 46, 256. He was evaluated for lower
5 back pain two weeks later. Tr. 256–57. After his injury, Plaintiff returned to
6 work, but was laid off soon thereafter in October. Tr. 46. The ALJ found it
7 “noteworthy” that Plaintiff's last job ended when he was laid off. Tr. 21. The
8 clear and convincing standard requires more than a noteworthy observation.

9 In sum, the ALJ properly relied upon the inconsistencies between Plaintiff's
10 subjective complaints and the objective medical record to support her credibility
11 determination. While the brief reference to Plaintiff's daily activities and layoff do
12 not themselves meet the standard, the ALJ's decision provides specific, clear, and
13 convincing reasons sufficient for this Court to conclude that the adverse credibility
14 determination is supported by substantial evidence. Thus, there has been no
15 showing of any error affecting the ALJ's residual functional capacity finding.

16 **IT IS HEREBY ORDERED:**

17 1. Plaintiff's Motion for Summary Judgment (ECF No. 15) is **DENIED**.

18 2. Defendant's Motion for Summary Judgment (ECF No. 19) is

19 **GRANTED.**

1 The District Court Executive is hereby directed to file this Order, enter
2 **JUDGMENT** for Defendant, provide copies to counsel, and **CLOSE** the file.

3 The District Court Executive is hereby directed to file this Order, enter
4 Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

5 **DATED** March 6, 2015.



Thomas O. Rice
THOMAS O. RICE
United States District Judge